PRIVY COUNCIL REPORT

SUNDRAM JAYKUMAL v. PUBLIC PROSECUTOR

[Privy Council (Lord Diplock, Lord Bridge of Harwich & Sir Owen Woodhouse) July 14, 1981]

Constitutional Law — Whether sections 121(6) & (7) and 122(1) of Criminal Procedure Code (Cap. 113) contrary to Constitution — Notice to accused to mention facts relied on in defence — Inferences which may be drawn from failure to mention facts — Criminal Procedure Code (Cap. 113), ss. 121(6) & 122(1) — Constitution of Singapore, art. 5.

Criminal Law and Procedure — Criminal Procedure Code (Cap. 113), ss. 121(6) & 122(1) — Constitution of Singapore, art. 5.

In this case the petitioner applied for leave to appeal, the only ground raised being the constitutionality of sections 121(6) and (7) and 122(1) of the Criminal Procedure Code. Section 121(6) requires a person charged with an offence, or officially informed that he may be prosecuted for it, to be given a notice in writing advising him that if there is any fact which he intends to rely upon in his defence in court he should mention it then and warning him that, if he holds it back until he goes to court, his evidence may be less likely to be believed. Section 122(1) provides that at his trial the court may draw such inferences as appear proper from his failure to mention, in response to such a warning, a fact on which he has sought to rely.

Held: the provisions of the Criminal Procedure Code plainly do not contravene the Constitution and leave to appeal must be refused.

Case referred to:-

(1) *Haw Tua Tau* v. *Public Prosecutor* [1981] 2 M.L.J. 49.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

George Newman Q.C. (*Mark Strachan* with him) for the petitioner.

Jonathan Harvie for the respondent.

Lord Diplock (delivering oral judgment of the Board): The only ground upon which leave to appeal is sought in the present case is in order to challenge the constitutionality of sections 121(6) and (7) and section 122(1) of the Criminal Procedure Code of Singapore.

Section 121(6) requires a person charged with an offence, or officially informed that he may be prosecuted for it, to be given a notice in writing advising him that if there is any fact which he intends to rely upon in his defence in court he should mention it then and warning him that, if he holds it back until he goes to court, his evidence may be less likely to be believed. Section 122(1) provides that at his trial the court may draw such inferences as appear proper from his failure to mention, in response to such a warning, a fact on which he has sought to rely.

So far from mentioning any exculpatory facts, the petitioner in the instant case, in response to the warning given to him under section 121(6), embarked upon a full confession, the accuracy of which was corroborated by real evidence discovered at the place where he had said that it would be found.

The petition in the instant case was lodged before this Board, (in *Haw Tua Tau* v. *Public Prosecutor*[1]) had given its reasons for rejecting a similar challenge to the constitutionality of section 188(2) and sections 195(1) and (2) of the Criminal Procedure Code which relate to the allocution to be addressed to the defendant when calling on him to enter on his defence and warning him that the court may draw such inferences as appear proper from his failure to give evidence on oath, if he should decide not to do so.

The reasons given by this Board for dismissing the appeal in *Haw Tua Tau* apply, *mutatis mutandis*, to the provisions of the Criminal Procedure Code which the petitioner would seek to challenge if leave to appeal were granted. Their Lordships are of the opinion that these provisions plainly do not contravene the Constitution.

Leave to appeal is accordingly refused.

Leave to appeal refused.

Solicitors: *Coward Chance; Jaques & Co.*